

STATE OF MICHIGAN
COURT OF APPEALS

COMMAND OFFICERS ASSOCIATION OF
MICHIGAN,

UNPUBLISHED
January 17, 2012

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF SHELBY,

No. 300999
Macomb Circuit Court
LC No. 2010-003298-CL

Defendant-Appellee.

Before: DONOFRIO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant. We affirm.

Plaintiff, a labor organization, sought judicial review of an award resulting from arbitration under Public Act 312 of 1969, MCL 423.231 *et seq.*, or “Act 312,” which provides for compulsory arbitration of labor disputes involving public police or fire departments because their employees are prohibited by law from striking, MCL 423.231. The trial court granted defendant’s motion for summary disposition under MCR 2.116(C)(7), concluding that plaintiff’s appeal of the award was untimely under *Dearborn Fire Fighters Association v City of Dearborn*, 78 Mich App 59; 259 NW2d 240 (1977), and barred by the doctrine of laches.

Appellate courts review rulings on summary disposition motions de novo. *Joliet v Pitoniak*, 475 Mich 30, 35; 715 NW2d 60 (2006). If no relevant facts are in dispute, whether summary disposition is appropriate under MCR 2.116(C)(7) because a cause of action is barred on statute of limitations grounds is a question of law, which is also reviewed de novo. *Id.* To the extent the lower court’s decision involved equitable considerations, we also review dispositional rulings on equitable matters de novo. *Blackhawk Development Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). However, review of a trial court’s underlying findings of fact is for clear error. *Id.*

“Act 312 is meant to provide an ‘alternate, expeditious, effective, and binding’ arbitration process. Unless otherwise agreed by the parties, Act 312 requires the arbitrator to call a hearing within 15 days of being appointed, conclude the hearing within 30 days of its commencement, and issue a written opinion within 30 days of the conclusion of the hearing.” *Detroit Fire Fighters Association IAFF Local 344 v City of Detroit*, 482 Mich 18, 24; 753 NW2d 579 (2008),

quoting MCL 423.231; citing MCL 423.236 and MCL 423.238 (footnotes omitted). Although MCL 423.242 expressly authorizes judicial review of Act 312 awards, the Act does not establish a period during which a party must seek review. The trial court correctly rejected the defendant's arguments that, in light of the absence of a controlling statute, the court should employ either the 20-day period established by the Public Employment Relations Act for appeals of rulings by the Michigan Employment Relations Commission, MCL 423.216(e), or the 60-day period established by the Administrative Procedures Act for appeals of agency decisions in contested cases, MCL 24.304(1). By their own terms, neither of these statutes may be applied to an appeal of a decision by an Act 312 arbitration panel. Nor, was plaintiff's assertion that we use the six-year limitation period utilized in *City of Ann Arbor v AFSCME, Local 369*, 284 Mich App 126; 771 NW2d 843 (2009) persuasive. The Court in *City of Ann Arbor* was focused on enforcement of a contract, not the judicial review of an arbitration proceeding under Act 312 which would create a contract.

We conclude that the trial court reasonably relied on *Dearborn Fire Fighters Association, supra*, to rule that plaintiff's appeal, which was filed over five months after the Act 312 award was entered, was untimely because its tardiness undermined the purposes of the Act. No case specifically establishes a time period during which a party must file a direct appeal of an Act 312 award. As plaintiff observes, *Dearborn Fire Fighters* based its reasoning, in part, on the unique procedural aspects of that case, concluding that the Act's purposes would be thwarted if the defendant was permitted to challenge an Act 312 award one year after the award was issued by way of a counterclaim in the plaintiff's suit to enforce a subsequent grievance arbitration award. *Id.* at 61-64. Nonetheless, in the absence of express authority governing direct appeals from Act 312 awards, *Dearborn Fire Fighters* provides persuasive guidance concerning the appropriate timing of such appeals, based on the purpose of Act 312 to establish an expeditious and binding arbitration process. *Dearborn Fire Fighters*, 78 Mich App at 66, observed:

If police and fire fighter strikes are to be avoided, the alternative method of labor negotiation set up by Act 312's compulsory arbitration scheme must be both expedient and secure. A direct challenge concerning any alleged deficiencies in the arbitration procedure, as allowed by Sections 10^[1] and 12^[2] of the act, is a necessary protection of the rights of the parties, but the challenge procedures are also designed for a quick and binding resolution of all complaints. [Footnotes added.]

We concur with the trial court's finding that plaintiff's delay in challenging the award unnecessarily prolonged uncertainty with regard to both the parties' relationship and defendant's financial position. Because Act 312 is expressly designed to create final agreements that,

¹ Section 10 of the Act, MCL 423.240, permits judicial enforcement of Act 312 awards.

² Section 12 of the Act, MCL 423.242, noted above, provides for judicial review of Act 312 awards.

moreover, take a governmental entity's financial position into account,³ the trial court reasonably concluded that plaintiff's unnecessary delay in this case compromised the Act's intent enough to render the appeal untimely. This is particularly true given that the need for a successor agreement was imminent

In order for the appeal process to serve the goal of a quick and binding resolution, a party must promptly seek review of any portions of the Act 312 award it wishes to challenge. Here plaintiff offered no explanation for why it waited over five months to challenge the award. The court found significance in the fact that, like the defendant in *Dearborn Fire Fighters*, plaintiff appears generally to have accepted the benefits and burdens of the award including current and lump sum retroactive wage increases implemented in February and March respectively but did not file its appeal until August. Although plaintiff emphasizes that any appeal would necessarily have been taken after defendant increased wages and paid significant back wages, in February and March 2010, respectively, as a result of the award, we agree with defendant and the trial court that the length of plaintiff's delay in appealing was fiscally significant. If plaintiff succeeded on appeal, defendant could face additional financial burdens.

Perhaps most significantly, the trial court concluded that plaintiff's delay directly controverted the purposes of Act 312 by exacerbating the uncertainty in the parties' labor relations. The parties' last contract expired in 2004 and the arbitration award did not enter until six years later. Only six months remained in the contract created by the arbitration award when the challenge was filed in circuit court. Indeed, because the agreement was about to expire, the parties were preparing to negotiate a successor agreement and, therefore, resolving the nature of their existing relationship was particularly necessary to create a stable labor relationship. Further, the delay of over five months is long in comparison to the short periods applicable to the arbitration process itself.

Because we conclude that the trial court did not err in granting defendant's motion for summary disposition on the basis of *Dearborn Fire Fighters* and the purpose of Act 312, we need not address the trial court's secondary conclusion that plaintiff's appeal was barred by the equitable doctrine of laches.

³ Act 312 is expressly concerned with the employing governmental entity's financial status: not only is the "financial ability of the unit of government to pay" a factor the Act 312 panel must consider in crafting its award, MCL 423.239(1)(a), but this factor must be given the "most significance, if the determination is supported by competent, material, and substantial evidence," MCL 423.239(2).

Affirmed.

/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause